IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS. 7 AND 14 OF 2004.

CRIMINAL REVISION APPLICATION NO. 7 OF 2004

1. Shri P. K. Patidar,
   Major, r/o F-15-A,
   Patto Quarters,
   Panaji Goa.

2. Shri Ashik Khan,
   Major, Jr. Engineer,
   Working at Ponda Municipal
   Council, Ponda, Goa.

3. Shri Mahadev Naik,
   Major, working at Ponda
   Municipal Council, Ponda, Goa.

4. Shri Krishna Naik,
   Major, working at Ponda
   Municipal Council, Ponda, Goa.

5. Shri Servelo Caldeiro,
   Major, working at Ponda
   Municipal Council, Ponda, Goa.

6. Shri Ashok Gosavi,
   Major, working at Ponda
   Municipal Council, Ponda, Goa.

7. Shri Rohidas Naik,
   Major, working at Ponda
   Municipal Council, Ponda, Goa.

8. Gangaram Lohira,
   Major, working at Ponda Municipal
   Council, Ponda, Goa.

9. Shri Venkatesh Gaude,
Major, working at Ponda
Municipal Council, Ponda, Goa.

10. Shri Govind Gaude,
Major, working at Ponda
Municipal Council, Ponda, Goa.

11. Shri Vithal Naik,
Major, working at Ponda
Municipal Council, Ponda, Goa.

12. Shri Ratnakar Naik,
Major, working at Ponda
Municipal Council, Ponda, Goa.

13. Shri Shashi S. Naik,
Major, working at Ponda
Municipal Council, Ponda, Goa.

14. Shri Krishna Bordekar,
Major, working at Ponda
Municipal Council, Ponda, Goa.

15. Nagappa Hasmani,
Major, working at Ponda
Municipal Council, Ponda, Goa. ... Applicants

versus

1. Umakant B. Kavlekar,
Major, married, r/o Dubai,
Through his duly constituted
Attorney, Shri Prasad P.Kavlekar,
Major, married, r/o Kavlem,
Ponda, Goa.

2. State through Public Prosecutor. ... Respondents

CRIMINAL REVISION APPLICATION NO. 14 OF 2004

Mrs. Nelly Aguiar,
Major, R/o Ward No.7,
Tisk, Ponda, Goa. ... Applicants

versus

1. Umakant B. Kavlekar,
   Major, married, r/o Dubai,
   Through his duly constituted
   Attorney, Shri Prasad P. Kavlekar,
   Major, married, r/o Kavlem,
   Ponda, Goa.

2. State of Goa. ... Respondents

Mr. S. D. Padiyar, Advocate for the Applicants in both the applications.

Mr. V. Tamba, Advocate for Respondent No.1 in both the applications.

Mr. S. N. Sardessai, Public Prosecutor for the State in both the applications.

CORAM : V. M. KANADE, J.

DATE : 23RD JUNE, 2005.

ORAL JUDGMENT

Both these Criminal Revision Applications can be

disposed of by a common Order since they are arising from the same proceedings which are pending in the trial Court. The Applicants are challenging the Judgment and Order passed by the Sessions Judge, North Goa, Panaji, setting aside the Judgment and Order passed by the Judicial Magistrate, First Class at Ponda in Criminal Case No. 8/P/99/B.

2. A complaint was filed by the Respondent against the present Applicants and others for offences punishable under Sections 427, 447 etc. on the ground that they had committed criminal trespass on the private property of the Complainant and had removed the fence which was put up on his own property. In the trial Court, an application was filed by the present Applicants under Section 197 of the Code of Criminal Procedure and it was alleged that the Applicants are public servants being the officers/employees/councillors of Ponda Municipal Council and that the complaint was filed without obtaining sanction as required in terms of Section 197 of the Code of Criminal Procedure and, therefore, proceedings were liable to be dropped. The trial Court allowed the application filed by the Applicants by Order dated 29-2-2000 and quashed the complaint vis-a-vis the present Applicants. Against the said Order, the Complainant initially had filed Criminal Revision Application in this Court No. 28/2000 which was disposed of by Order dated 28-9-2000 directing the Complainant to challenge the Order of the Magistrate before the Sessions Court and the

Sessions Court was directed to decide the issue raised by the Complainant on merits and in accordance with law. The Sessions Court by its Order dated 17-1-2004 allowed the Criminal Revision filed by the Complainant and set aside the Judgment and Order passed by the Judicial Magistrate, First Class, Ponda. The Applicants are challenging the said Order passed by the Sessions Court in Criminal Revision Application No. 68/2000.

3. From the perusal of the application which is filed by the Applicants in the trial Court, it can be seen that no details have been given in the said application nor any matertial was supplied in support of the said application. The Sessions Court has allowed the said application and one of the ground on which the said application was allowed is that particulars have not been mentioned by the Applicants in their application under Section 197 of the Code of Criminal Procedure which was filed before the Judicial Magistrate, First Class, Ponda.

4. In this view of the matter, in my view, it would be appropriate and in the interest of justice to permit the Applicants to supply additional material in support of their application which is filed under Section 197 of the Code of Criminal Procedure and the Respondents/Original Complainants may also be permitted to file their reply to the amended application and thereafter the Judicial Magistrate, First Class, Ponda may

decide the application afresh on merits and in accordance with law. The Judgment and Order passed by the Sessions Judge, North Goa, Panaji, in Criminal Revision Application No.,68/2000 is set aside and quashed and the Judicial Magistrate, First Class, Ponda is directed to decide the application filed by the Applicants herein by permitting the Applicants to furnish additional evidence and material in support of the said application. The Respondents/Original Complainants may be permitted to file an additional reply to the amended application and thereafter the Judicial Magistrate, First Class, Ponda is directed to decide this application on merits and in accordance with law as expeditiously as possible. It is clarified that the earlier Order passed by the Judicial Magistrate, First Class, Ponda dated 29-2-2000 is set aside.

V M. KANADE, J.

RD.